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SUBJECT: 2007 SPECIAL 301 REVIEW - BANGLADESH

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¶1. Summary: Bangladesh is establishing the legal framework needed to comply with its obligations under the TRIPS agreement, but has not yet implemented the patent or trademark provisions of TRIPS. Although new laws have been drafted, they have not been enacted. Enforcement of intellectual property rights is lax. Bangladesh is predominantly a consumer of counterfeit and unlicensed intellectual property. The five-week old interim government established following the declaration of a state of emergency has moved swiftly to address underlying governance issues that contribute to IPR infringement. Post recommends against listing Bangladesh under the established Special 301 categories. End summary.

¶2. The immediate past parliamentary government's term expired in October, 2006. In accordance with the constitution, a Caretaker Government was formed to organize and hold elections within 90 days. In response to growing political instability and the threat of violence during the elections, the President of Bangladesh declared a state of emergency under the constitution on January 11, 2007. The initial Caretaker Government resigned and was replaced by a new Caretaker Government. Elections scheduled for January 22 were canceled. The current Caretaker Government has pledged to create the conditions necessary for free, fair and credible elections and to hold elections as soon as possible; however, it has not announced a specific timeframe for elections.

¶3. Bangladesh is a signatory of the Uruguay Round agreements, including the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and was obligated to bring its laws and enforcement efforts into TRIPS compliance by January 1, 2006. However, according to a November 2005 WTO decision, Bangladesh has until July 2013 as an LDC to bring its laws and enforcement efforts into TRIPS compliance. The Government of Bangladesh (GOB) enacted a Copyright Law in July 2000, updating its copyright system and bringing the country's copyright regime into compliance with TRIPS. The GOB drafted new patent and trademark laws in 2005 to further comply with WTO requirements. These draft laws have not yet been enacted. It is unclear whether these laws could be enacted prior to the election of a new parliament. There is no legislation specifically addressing protection of traditional knowledge or expressions of folklore or related to genetic resources and access and benefit sharing.

¶4. Piracy of intellectual property is nonetheless widespread. Optical media (CDs, VCDs, DVDs, and software) sold in Bangladesh is almost exclusively pirated. Current

imported pirated DVDs are widely available for an average price of US \$1.45 a disk. Although typically lacking special features and high-end audio tracks, the feature presentation is usually of good quality. These DVDs do not appear to be mastered and produced locally; rather, most are imported from Asia and South Asia by wholesalers and distributed to retailers. In 2006, shops began selling locally produced copies of imported, pirated DVDs at a twenty percent discount (approximately \$1.15 per disk). These disks are produced using consumer-grade DVD burners and low quality recordable disks. Post has received isolated reports of commercial grade optical media production facilities in Bangladesh and is working with industry to verify these reports. Industry representatives have expressed continued concern that improved IPR enforcement in Pakistan is prompting relocation of illegal production facilities to Bangladesh.

15. Piracy of printed material is also widespread. Although some stores in more affluent districts carry legitimate copies of fiction and non-fiction books, textbooks used in public and private universities are widely duplicated and distributed to students. Duplication generally takes the form of photocopies of an original, master text. Printing and copying shops near universities are widespread and almost all textbooks used in schools and universities are widely copied.

16. Theatrical print piracy is also prevalent and has been implicitly sanctioned by the GOB film censor board, which has approved obviously pirated prints of films for distribution in Bangladesh. Industry sources believe most pirated theatrical prints are produced in India from legitimate prints, and smuggled into Bangladesh across its long boarder with India.

17. The GOB does not ensure that government offices,

state-owned enterprises and semi-government organizations use only licensed software or that they obtain sufficient licenses for all copies of software in use by the GOB.

18. The GOB does not devote adequate resources to the enforcement of IPR in Bangladesh. Lack of technical expertise and capacity to enforce remain significant problems for relevant government agencies. Copyright and trademark offices are under-staffed and overburdened and most personnel lack necessary expertise. The government has expressed genuine interest in attending the Global Intellectual Property Academy; however, funding is a limiting factor. In addition, systemic problems in the courts prevent effective enforcement of much of Bangladesh's laws, including protection of property rights generally and enforcement of IPR in particular. The magistrate and trial courts are seriously overburdened and rife with corruption. In the rare cases when judgments are obtained, enforcement of the judgments is itself problematic. Police and judges do not have the necessary training to handle IPR violations. There are, however, rare cases of police raids on DVD and software shops that produce illegitimate works.

19. Companies have reported receiving cooperation from the Bangladesh Standards and Testing Institute (BSTI), a government agency with responsibility for standards and labeling regulation. BSTI has used its authority to regulate deceptive labeling and trade practices to address IPR violations in the misbranding of consumer goods. While BSTI has been willing to investigate specific complaints, it has insufficient resources to pursue a proactive campaign against IPR violations in consumer goods.

10. During its first five weeks in office, the current interim government has undertaken a highly publicized campaign against corruption. Many high-level officials, including former ministers and members of parliament, are under arrest as are many businessmen with a notorious reputation for corruption and collusion with allegedly corrupt officials. The government has announced it will sign

the United Nations Convention Against Corruption. It has requested and received the resignation of the members of the Anti-Corruption Commission, which was widely acknowledged to be ineffective, and is undertaking a comprehensive review of legislation governing the commission and addressing corruption generally. The government has also concluded procedures to transfer control over the lower courts from the executive department to the High Court, a legally independent branch of government.

¶11. Comment: Post shares industry's concerns about widespread piracy of IPR in Bangladesh. We do not, however, concur with industry's recommendation that Bangladesh be included on the watch list. Piracy of IPR is still largely an issue of domestic consumption of pirated materials produced elsewhere. While duplication of textbooks and other printed material is widespread, the quality is poor and appears to be intended primarily for domestic consumption. Industry's allegations of optical media production plants are disturbing; however, production apparently remains focused on the domestic market at this time. Post is working with industry to seek government action against these plants. The response of the new interim government to these allegations will be an important factor for next year's Special 301 review.

¶12. The proactive steps taken by the new interim government to address core governance and law and order issues evidence a new commitment to enforcing the rule of law. In doing so, the government is addressing important underlying conditions that have contributed to an environment in which IPR infringement has flourished. While lack of expertise and capacity to enforce existing IPR laws will continue to be a significant problem, the new emphasis on enforcement is a welcome change that may carry-over to the enforcement of existing IPR legislation. Bangladesh continues to work to meet the new deadline for compliance with its TRIPS obligations. Under these conditions, we doubt a "name and shame" approach will effectively motivate the government of Bangladesh to improve the protection of IPR in Bangladesh. End Comment.
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